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13 **UNITED STATES BANKRUPTCY COURT**
14
15 **DISTRICT OF NEVADA**

16 In re:

17 USA COMMERCIAL MORTGAGE
18 COMPANY,

19 Debtor.

20 Case No. BK-S-06-10725-LBR

21 Chapter 11

22 **FOURTH OMNIBUS OBJECTION
23 OF USACM TRUST TO
24 UNALLOCATED AMOUNTS OF
25 PROOFS OF CLAIM**

26 Date of Hearing: August 30, 2011
Time of Hearing: 10:30 a.m.
Estimated Time for hearing: 10 min.

1 The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant
2 to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and
3 Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an
4 order disallowing the Unallocated Amounts of the Proofs of Claim listed in **Exhibit A**.

5 The claims at issue are all multiple loan claims, meaning each claim is based upon
6 investments in more than one loan. When the Trust adds together the partial claims that
7 make up each claim, the sum total is less than the total amount of the claim stated on the
8 face of the proof of claim. The difference between the total of the partial claims and the
9 total amount of the proof of claim is referred to herein as the “Unallocated Amount.” This
10 Objection is supported by the Court’s record and the Declaration of Edward M. Burr in
11

1 Support of Omnibus Objections to Unallocated Claim Amounts (the “Burr Decl.”) filed
2 with this objection.

3 THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE
4 DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THEIR INVESTMENTS OR TO
5 SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE REAL
6 PROPERTY SECURING THEIR LOANS.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. BACKGROUND FACTS**

9 **a. The USACM Bankruptcy**

10 On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief
11 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as
12 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
13 Debtor’s post-petition management of the Debtor was under the direction of Thomas J.
14 Allison of Mesirov Financial Interim Management, LLC, who served as the Chief
15 Restructuring Officer.

16 USACM was a Nevada corporation that, prior to the Petition Date, was in the
17 business of underwriting, originating, brokering, funding and servicing commercial loans
18 primarily secured by real estate, both on behalf of investors and for its own account. That
19 business included the solicitation of investors to purchase fractional interest in loans that
20 USACM originated and then serviced. These investors are referred to as “Direct Lenders”
21 in USACM’s bankruptcy case and in this Objection.

22 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
23 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.
24 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this
25 Court, USACM sold the servicing rights to most of the loans it serviced to Compass

1 Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Eagle
2 Meadows Loan. The sale to Compass closed on February 16, 2007.

3 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,
4 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the
5 successor to USACM with respect to standing to seek allowance and disallowance of
6 Claims under 11 U.S.C. § 502(a).

7 **B. The Unallocated Amounts**

8 Sierra Consulting Group, LLC (“Sierra”) has been working closely with both the
9 Trustee for the USACM Trust and Development Specialist Inc. (“DSI”), the Trustee’s
10 financial advisor, in evaluating all of the claims that were filed in the USACM estate.
11 (Burr Declaration ¶ 6.).

12 Sierra discovered upon review of the proofs of claim filed in the USACM case that
13 many of them were based on multiple direct lender loans, so in some instances a single
14 proof of claim was actually several claims based on each Direct Lender’s investments in
15 multiple loans. Each part of such a claim is referred to as a “Partial Claim.” Sierra relied
16 upon the information provided in the proofs of claim to allocate “Partial Claim” amounts
17 to the Direct Lender loans listed in the supporting documentation. Sierra additionally
18 discovered that in some cases the “Partial Claims” did not add up to the claim amount
19 listed on the claim register, “Total Claim Amount.” Sometimes “Partial Claims” added up
20 to an amount more than the “Total Claim Amount” and in other instance the “Partial
21 Claims” added up to an amount less than the “Total Claim Amount.” Exhibit A to the
22 Burr Declaration lists the proofs of Claim where the sum of its “Partial Claims” is less
23 than the “Total Claim Amount.” The “Unallocated Amount” listed on the exhibit is the
24 difference between the “Total Claim Amount” and the sum of its “Partial Claims.” (Burr
25 Declaration ¶ 7.)

26

1 **Exhibit A**, attached to the Burr Declaration, lists Proofs of Claim in which the
2 amounts referred to in the partial claim(s) is (are) less than the total amount stated on the
3 face of the proof(s) of claim (the “Unallocated Amount”). (Burr Decl. ¶ 8.) **Exhibit A**
4 identifies the Proof of Claim number, the claimant, the claimant’s address, the total
5 amount of the claim and the amount of the claim that appears to Unallocated based upon
6 the information provided by the claimant. (Burr Declaration ¶ 8.) The claims listed in
7 **Exhibit A** are referred to hereafter as the “Unallocated Claims.” As required by Nevada
8 LR 3007, a copy of the first page of the proof of claim for each of the claims referenced in
9 **Exhibit A** are attached as **Exhibit B**.

10 **II. JURISDICTION**

11 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
12 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
13 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

14 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and
15 Bankruptcy Rule 3007.

16 **III. APPLICABLE AUTHORITY**

17 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
18 will be allowed unless a party in interest objects. If a party in interest objects to the proof
19 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
20 shall allow the Claim except to the extent that the Claim is “unenforceable against the
21 debtor . . . under any . . . applicable law for a reason other than because such claim is
22 contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is
23 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof
24 of claim controverts the presumption, the creditor ultimately bears the burden of
25 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*

1 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
2 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

3 **IV. THE OBJECTION**

4 The objection only pertains to the amount of each claim that is not allocated to a
5 particular investment or cause of action as set forth in the proof of claim. As to
6 Unallocated Claims, the claimant has not articulated a theory of liability or damages.

7 This objection will not affect the Direct Lenders' right to be repaid on an
8 investment by the applicable Borrower, to recover from the sale of any collateral that
9 secured the applicable loan, or to recover on the guaranty supporting the loan. Nor will
10 this objection affect the Direct Lenders claim to the extent that it is clearly based upon an
11 investment in a particular loan.

12 **V. CONCLUSION**

13 The USACM Trust respectfully requests that the Court disallow the portion of the
14 claims against USACM listed in **Exhibit A** to the extent the total amount claimed on the
15 face of the proof of claim exceeds the amounts set forth in exhibits to the proof of claim,
16 that is the Unallocated Amount. This objection concerns only the Unallocated Amount of
17 the claims and not any other claims of any of the claimants. The USACM Trust also
18 requests such other and further relief as is just and proper.

19 Dated: July 24, 2011

20 LEWIS AND ROCA LLP

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1 Copy of the foregoing and pertinent
2 portion of Exhibits deposited on July 24,
3 2011 in the U.S. Mail, first class postage
4 prepaid, to all parties listed on Exhibit A
5 attached.

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s/ Matt Burns
Matt Burns
LEWIS AND ROCA LLP